IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.580 OF 2007

Neelam Naresh Adsule ..Petitioner

Versus

The State Election Commissioner
& Ors. ..Respondents

Mrs. Neeta P. Karnik with Mr. R.I. Bagdadi for the petitioner
Mr. S.B. Shetye, for respondent No.1.
Mr. R.S. Apte, for respondent Nos. 2 and 3.

CORAM : F.I. REBELLO &
R.V. MORE,JJ.
DATED : 23RD JANUARY, 2007

P.C.

. Rule. Heard forthwith.

2. It is the case of the petitioner that she has been put up as a candidate of a recognised national party. The last date of filing nomination was 3.00 p.m. of 15th January, 2007. The petitioner filed her nomination before 3.00 p.m. on 15th January, 2007 and also enclosed with that Annexure II, the document issued by the national party to enable the petitioner to be allotted the symbol. One other candidate also filed nomination along with the Annexure II from the same National party. The application of that candidate was first in point of time. The last date for withdrawal was 19th January, 2007. By that date the candidate who had filed the nomination first in point of time had withdrawn her candidature. The date fixed for

allotment of symbol was 20th January, 2007. It is the case of the petitioner that the list of symbols allotted to the candidates including the petitioner was put up on 22nd January, 2007. To the petitioner's surprise she was not allotted the symbol of the National party and she has been treated as anindependent candidate. It is in these circumstances that the petitioner has filed the present petition.

3. On behalf of the Returning Officer and the Election Commission, learned Counsel points out that the Election Commission has issued certain directions. In terms of the directions which have been issued, if there are two candidates claiming the same symbol and if the national party does not file Annexure II before the last date of filing nomination by allotting the symbol to a particular candidate, then the candidate who had filed the nomination first should be allotted the symbol. In the instant case the petitioner had not filed the nomination first and though the other candidate withdrawn the nomination in terms of the instructions the symbol could not be allotted to the petitioner as the national party had not filed Annexure II before 3.00 p.m. of 15th January, 2007.

4. We have heard the learned Counsel for the parties. The last date for withdrawal of the nomination was 19th January, 2007. The date for allotment of symbol was 20th January, 2007. In other words only those candidates who

were fielded as candidate of the National Party could be allotted the symbol of the National Party, if they had filed Annexure II along with the nomination form. Annexure II under Column 5 requires the following information to be given:-

> Name of the substitute candidate (who) will step-in, in the event of the approved Candidate's nomination being rejected on scrutiny or his withdrawing from the contest."

In other words this would indicate that the symbol of the recognised political party can be allotted to the candidate whose name is given and who is nominated by the party and whose nomination is found valid, atleast as and upto the last date of withdrawal. It is in this background that we have to decide the instant case.

. It is no doubt true that the Courts ordinarily should not interfere once the election process commences. However, in the instant case the petitioner's nomination has been found to be valid. She had filed Annexure II of a recognised political party and she was the only candidate of that political party on the date when the symbols were to be allotted. In these circumstances can it be said that the action of the respondents is within jurisdiction. The effect of not allotting the symbol even if there is only one candidate in the field would be that the recognised political party contesting the elections will have no

candidate in that particular ward. It is in this context that we have to consider the issue. The petitioner has otherwise complied with all the other requirements. In these circumstances are the instructions issued by the Election Commission in conformity with the legal requirements. Annexure II column 5 which we have reproduced would indicate that the name of substitute candidate if given such substitute candidate even if had filed his nomination after some other candidate of the same party who had annexed Annexure II in case of rejection of nomination paper or withdrawal then it is that substitute candidate who has to be allotted the symbol. The mere fact in this case that information was not given to our mind would be irrelevant. If the instructions of the Election Commission are to be followed, such a substitute candidate, which we have referred to above, even if he has a valid Annexure II and the candidate who had filed his nomination first in point of time in the absence of political party filing Annexure II before the last date and had withdrawn his nomination, the candidate remaining would not be allotted the symbol. In our mind this would be inconsistent. Ultimately the test must always be as to how many candidates of that party have filed Annexure II and are in the field after the last date of withdrawal. If there is only one candidate we see no reason as to why that candidate having a valid Annexure II should not be allotted the symbol of that political party. It is only in the event that there are two or more candidates who have filed Annexure II of a political party and the political party itself independently having

not filed Annexure II before 3.00 p.m. of the last date would the instructions be relevant. The instructions cannot be applied in a case like the present where there is only one candidate of that political party to whom the Annexure II has been granted.

. In the light of that in our opinion the action of the respondent No.3 in rejecting the nomination is without jurisdiction. The respondent No.3 is directed to allot the symbol of the Indian National Congress to the petitioner and allow her to contest as a candidate of that party.

5. Rule made absolute accordingly. No order as to costs.

. Respondent Authorities to act on the authenticated copy of this order.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**